



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,540	01/16/2002	Gavriel J. Iddan	P-2752-US	1800

49443 7590 10/29/2007
PEARL COHEN ZEDEK LATZER, LLP
1500 BROADWAY 12TH FLOOR
NEW YORK, NY 10036

EXAMINER

FOREMAN, JONATHAN M

ART UNIT	PAPER NUMBER
----------	--------------

3736

MAIL DATE	DELIVERY MODE
-----------	---------------

10/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/046,540

Applicant(s)

IDDAN, GAVRIEL J.

Examiner

Jonathan ML Foreman

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 73-89 is/are pending in the application.
- 4a) Of the above claim(s) 78-87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 73-77, 88 and 89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/15/07 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 73 – 77, 88 and 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/53792 A2 to Given Imaging Ltd. in view of JP 05200015 to Ueda et al.

In regards to claims 73 – 77, 88 and 89, Given Imaging Ltd. discloses a method for determining body lumen conditions including: admitting a first endo-luminal sample on an interaction surface (54), the surface includes an indicator immobilized thereon for reacting with an endo-luminal sample resulting in an optical change (Page 11, line 32 – Page 12, line 2), the reaction occurring on the interaction surface. Given Imaging Ltd. discloses illuminating the interaction surface and imaging the optical changes in the interaction surface with an optical system (Page 11, line 29 – Page 12, line 3). Given Imaging Ltd. discloses imaging a gastrointestinal wall. The interaction surface is transparent in the wavelength of illumination (Page 11, line 30). Given

Art Unit: 3736

Imaging Ltd. discloses transmitting the video signals and a receiving system for receiving the video signals (Page 11, line 26). However, Given Imaging Ltd fails to disclose the interaction surface being an interaction chamber and pumping the sample through a first opening into the interaction chamber, discharging the sample through a second opening and replacing the sample with a new sample. Ueda et al. discloses a method for determining body lumen conditions including pumping a sample through a first opening (4) into an interaction chamber, discharging the sample through a second opening (5) and replacing the sample with a new sample [0024]-[0029]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the interaction surface as disclosed by Given Imaging Ltd. to include an interaction chamber in relation to a first and second opening as taught by Ueda et al. in order to help protect the indicator and to allow for a series of samples to be collected and measured. Furthermore, the claims would have been obvious because a particular known technique was recognized as part of the ordinary capabilities of one skilled in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention to apply the technique of collecting a sample within chamber through a first opening and discharging the sample through a second opening as taught by Ueda et al. to improve the method of determining body lumen conditions of Given Imaging Ltd. for the predictable result of protecting the indicator on the interaction surface.

Response to Arguments

4. Applicant's arguments filed 10/15/07 have been fully considered but they are not persuasive. Applicant asserts that neither Given Imaging Ltd. nor Ueda et al. disclose or teach an interaction chamber having immobilized therein an indicator configured to react with at least the first endo-luminal sample, the reaction occurring within the interaction chamber, and the reaction resulting in an optical change. However, the Examiner disagrees. Given Imaging Ltd. discloses an

Art Unit: 3736

interaction surface having immobilized thereon an indicator configured to react with an endoluminal sample, the reaction occurs on the surface, and the reaction produces an optical change. Given Imaging Ltd. lacks the disclosure of an interaction chamber and a first and second opening through which a sample enters and exits. However, Ueda et al. teach an interaction chamber associated with a first and second opening through which a sample enters and exits. One having ordinary skill in the art would recognize that by modifying the interaction surface disclosed by Given Imaging Ltd. to be an interaction chamber in communication with a first and second opening as taught by Ueda et al. that the reagents immobilized on the surface would be protected from unintentional damage and that multiple samples and measurements could be taken at desired times and intervals. The Examiner asserts that the claims remain obvious over WO 01/53792 A2 to Given Imaging Ltd. in view of JP 05200015 to Ueda et al.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3736

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JMLF


MARK H. INDEBURG
SENIOR PATENT EXAMINER
ELECTRONIC BUSINESS CENTER 8700